

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HARVEY FAIRLEY,

Petitioner,

v.

CATHERINE BAUMAN,

Respondent.

Case No. 18-13115
Hon. Terrence G. Berg

**ORDER TRANSFERRING PETITION TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Michigan prisoner Harvey Fairley, (“Petitioner”), filed what purports to be a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner is being held in custody at a Michigan correctional facility as a result of his 1999 Wayne County Circuit Court conviction for assault with intent to murder.

Petitioner previously filed a federal habeas petition challenging his conviction. *Fairley v. Jamrog*, No. 03-cv-72516 (E.D. Mich. June 9, 2004). That petition was denied on the merits. Petitioner also twice sought permission to file a second petition, but these requests were denied. *In re Fairley*, No. 10-1430 (6th Cir. Nov. 19, 2010); *In*

re Fairley, No. 12-2514 (6th Cir. June 18, 2013).

Federal district courts lack jurisdiction to consider successive habeas petitions absent preauthorization from the court of appeals. *Franklin v. Jenkins*, 839 F.3d 465, 473 (6th Cir. 2016) (citing 28 U.S.C. § 2244(b)(3)); *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

When a habeas petitioner files a second or successive petition for habeas corpus relief in the district court without preauthorization, the district court must transfer the case to the court of appeals. *See* 28 U.S.C. § 1631; *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997).

The instant case is at least Petitioner's fourth attempt to seek federal habeas relief.¹ Accordingly, the Clerk of the Court shall transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 for a determination of whether Petitioner may file a successive petition.

SO ORDERED.

Dated: October 30, 2018 s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

¹ Petitioner also has a recently filed habeas case pending in the Western District of Michigan. *See Fairley v. Bauman*, W.D. Mich. No. 2:18-cv-00096.

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on October 30, 2018.

s/A. Chubb

Case Manager